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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,197	07/31/2006	Anthony John Ujhazy	3869/025 US	7101
22440 7590 05/11/2009 GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 10016-0601			EXAMINER GETZOW, SCOTT M	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 05/11/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,197	<b>Applicant(s)</b> UJHAZY ET AL.	
	<b>Examiner</b> Scott M. Getzow	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 121-142 and 145-149 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 121-142, 145-149 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

1. Claims 121-123,125-142,145-149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Estes (5,794,615) in view of Cho et al (2004/0134496).

Estes teaches a device which provide positive air pressure to a patient using a mask, and various patient conditions can be sensed, as set forth in column 18, including inspiratory flow and volume, etc. Cho teaches that it is well known to monitor a patient's air flow, and to calculate therefrom an indicator which represents information regarding the patient's heart condition. For example, par. 7 teaches detecting respiration using a breathing mask, similar to the one used in Estes. Par. 38 teaches that circulatory delay time may be monitored to detect problems in heart failure patients, And that 'monitoring such periodic breathing patterns offers the opportunity to assess the patient's cardiac output indirectly by measuring the circulatory delay time'. Par. 40 teaches that various metrics such as breathing cycle length, etc, can be 'correlated to cardiac function'.

Thus, to use the ability to ascertain cardiac condition from the patient's flow, as taught by Cho would have been obvious to use with Estes since important information can be ascertained from the flow rate that would improve patient care, and that the combination of Estes and Cole would yield a predictable result. Re claim 122, par. 4 of Cole teaches that Cheyne stokes occurs frequently in heart failure patients. Re claim 123, par. 50 teaches the use of a programmer which can, as is well known, issue prompts to input information and to store relevant information in the device. Re claim 125, par. 25 of Cole teaches that parameters are compared to predetermined criteria, and a detection threshold. Par. 28 also teaches comparison to a threshold. Re claim 126, Estes

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teaches that the airway resistance is measured, which is indicative of increased pressure of breathable gas. Re claim 127, various trends can be produced and stored for subsequent analysis, par. 41. Re claim 128, it is considered to be common sensical to prevent interference with the breathing event from being recorded properly, since the primary purpose is to detect cardiac conditions based on breathing pattern, and to reduce interference would facilitate such process. Re claim 129, the Cho device can measure various [parameters including respiration rate, minute ventilation, apnea length etc. par. 25 and 40. Further 'waxing and waning' can be detected by the device of Cho and Estes and would be considered to be useful in determining cardiac output. Re claim 130,131, see par. 28 of cho. Re claim 132,133,134, see par. 41 of Cho. Ratios are common in the art to quickly determine the change of a heart indicator relative to a previous heart indicator. Re claims 135,136, see par. 26 of Cho. Re claims 137-141, the skilled artisan would be well aware of using a frequency analysis (see also Greenhut '719) to determine Cheyne-stokes breathing, and such is known in the art to accurately determine and diagnose the presence of specific breathing patterns, including Cheyne-stokes breathing. Re claim 142,145-149, see par. 24,25 of Cho. The skilled artisan would know the threshold that is appropriate to detect various heart conditions.

2. Claim 124 is rejected under 35 U.S.C. 103(a) as being unpatentable over Estes (5,794,615) in view of Cho et al (2004/0134496), And further in view of Foulkes et al (5,846,720).

See previous office action.

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3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Greenhut '719 teaches many of the features of applicant's invention.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/  
Primary Examiner, Art Unit 3762